IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 7997 OF 2005

Anil Harish Gehani. ...Applicant
V/s.
Kailash @ Gul Srichand Punjabi & Ors. ...Respondents

Shri S.R. Chitnis, Sr.Advocate with Shri Sudeep Pasbola for Applicant.
Shri A.P. Mundargi with Shri S. Kantharia for Respondents No.1 and 2.
Ms.S.D. Shinde, APP for the State.

CORAM : V.M. KANADE, J.

DATED : MARCH 9, 2006

P.C. :-

. This is an application for cancellation of bail filed by the original complainant. The brief facts are as under :-

2. It is the case of the applicant-complainant that he is a businessman dealing with gold and jewellery and the respondents were known to him for a very long time and they had cordial relations with each other. The respondent is a builder by profession.

3. It is alleged that by the complainant that the accused - respondents herein placed orders for diamonds

and solitaire to the tune of Rs.46 lakhs and assured the complainant that they would make the payment within a short time and relying on these assurances which were given by the accused, the complainant handed over the possession of the diamonds to the accused. Further it is stated in the complaint that the accused gave two cheques to them which were issued by one Ms.Raina Ramchandani. According to the complainant, the accused informed him that they had given diamonds to the said Raina Ramchandani and she had given these cheques in consideration of the said jewellery which was sold by the complainant to the accused. It is alleged that the accused thereafter told the complainant not to deposit the said cheques and took him to the Bandra Police Station where the said Raina Ramchandani was arrested and kept in the lock up. It is the case of the complainant, therefore, that the amount which was due and payable towards the delivery of the said diamonds was not paid by the accused and therefore, they have committed the offence punishable under Sections 406 and 420 of the IPC.

4. Shri S.R. Chitnis, learned Senior Counsel appearing on behalf of the applicant submitted that the trial Court had erred in coming to the conclusion that the jewellery was not delivered by the complainant to the accused. It is submitted that the finding of the Sessions Court was perverse and it was based on surmises and conjectures. It was submitted the trial Court had arrived at the said conclusion merely because the applicant had accepted the cheques which were drawn by Raina Ramchandani. He submitted that the trial Court erred in holding that the complainant ought not to have accepted the cheques issued by the Raina Ramchandani when the transaction was between the applicant-complainant and the accused. He invited my attention to a document which was produced through the Investigating Officer which shows the description of the diamonds and certain calculations were made regarding the price of the diamonds. He submitted that this is a standard practice in case of jewellery business. He also invited my attention to the affidavit-in-reply filed by the Investigating Officer which indicated that the said Raina Ramchandani had duped several other

jewellers in that locality. It is submitted that therefore, the trial Court had erred in granting bail to the respondents.

5. On the other hand, Mr.Mundargi, learned Senior Counsel appearing on behalf of the respondent submitted that no receipt was produced by the applicant to prove that the diamonds were given in possession to sold to the respondents. He submitted that the copy of the note book i.e. jhangad as known in the common parlance i.e. a rough receipt was admittedly not signed by the respondents. He submitted that the absence of any documentary evidence to prove entrustment of the jewellery, no offence was made out for the offence punishable under Section 406 read with Section 420 of the IPC. He invited my attention to the order passed by this Court in the application which was filed by the various other persons in whose favour the order of anticipatory was granted by this Court wherein the facts were identical and the same Raina Ramchandani had duped the other jewellers who were filed complaints against the persons who had introduced the said lady to the

jewellers.

6. In my view, no case is made out for interfering with the order passed by the Sessions Court. It is no doubt true that the reasoning given by the Sessions Court for arriving at the conclusion and recording its findings, is not entirely correct, yet, the facts as disclosed in the present application clearly reveal that there was no document in existence showing the delivery of diamonds to the accused-respondents herein. It is no doubt true that said Raina Ramchandani was introduced to the complainant by the two accused persons, yet, that by itself can not be an offence punishable under Section 420 or 406 of the IPC. The accused have co-operated with the police. Therefore, in my view, there is no reason to interfere with the order passed by the Sessions Court.

. Criminal Application is, therefore, rejected.

(V.M. Kanade, J.)